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General Assembly

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SPECIAL COMMITTEE ON THE CHARTER OF
THE UNITED NATIONS AND ON THE
STRENGTHENING OF THE ROLE OF THE
ORGANIZATION
27 February-10 March 1995

WORKING PAPER SUBMITTED BY POLAND

Draft resolution on the question of the deletion of the "enemy-State" clauses from the Charter of the United Nations

The General Assembly,

Recalling its resolution 49/58 of 9 December 1994,

Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which met in New York from 27 February to 10 March 1995,

Taking note of the recommendation of the Special Committee on the most appropriate legal action to be taken on the question of the deletion of the "enemy-State" clauses from the Charter of the United Nations,

Noting that those provisions have never been invoked,

Noting also that States to which those provisions were directed have been admitted to the United Nations and are peace-loving Members of the Organization which contribute in the most valuable manner to all its endeavours,

1. Recognizes that the "enemy-State" clauses of the Charter of the United Nations, namely the latter part of the second sentence of Article 53.1, Article 53.2 and Article 107, as strictly related to the immediate post-Second World War era have become obsolete and not applicable;

2. Recognizes also that maintenance of those clauses in the Charter of the United Nations is not in conformity with the substantial changes that have taken place in the world and within the Organization;

3. Expresses the view that these clauses should be deleted as soon as possible by using the amendment procedure set out in Article 108 of the Charter.

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SPECIAL COMMITTEE ON THE CHARTER
OF THE UNITED NATIONS AND ON
THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION
27 February-10 March 1995

WORKING PAPER SUBMITTED BY ARGENTINA, AUSTRALIA, BELGIUM, JAPAN, NEW ZEALAND, PAKISTAN, POLAND, PORTUGAL AND SPAIN

Draft resolution on the question of the deletion of the "enemy-State" clauses from the Charter of the United Nations

The General Assembly,

Recalling its resolution 49/58 of 9 December 1994,

Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which met in New York from 27 February to 10 March 1995,

Taking note of the recommendation of the Special Committee on the most appropriate legal action to be taken on the question of the deletion of the "enemy-State" clauses from the Charter of the United Nations,

Recognizing that, having regard to the substantial changes that have taken place in the world, the "enemy-State" clauses of the Charter of the United Nations have become obsolete,

Noting that the States to which those clauses were directed are Members of the United Nations and represent a valuable asset in all the endeavours of the Organization,

Noting also that the fiftieth anniversary of the United Nations offers a valuable opportunity for the General Assembly to consider the course of action regarding this question,

Expresses its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the "enemy-State" clauses from Articles 53, 77 and 107, at the earliest appropriate time.

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27 February-10 March 1995

MEMBERSHIP AND DECISION-MAKING

Working paper submitted by New Zealand

1. There are currently 47 members of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, as decided by the General Assembly in 1975 when it established the Committee (resolution 3499 (XXX) of 15 December 1975).

2. At its forty-ninth session, the General Assembly requested the Committee to continue its review of its membership ... in particular the proposal on the full participation of all Member States in its work (resolution 49/58 of 9 December 1994).

3. New Zealand proposes that the Committee recommend to the Sixth Committee that its membership be open to all States Members of the United Nations. This proposal is based on the principles of equitable geographical representation and the sovereign equality of States.

Background

4. The General Assembly first established the Ad Hoc Committee on the Charter of the United Nations, consisting of 42 members appointed by the President of the Assembly on the basis of equitable geographical distribution. The aims of the Ad Hoc Committee were set out in General Assembly resolution 3349 (XXIX) of 17 December 1974, as follows:

(a) To discuss in detail the observations received by Governments [about the revision of the Charter];

(b) To consider any additional specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes;

(c) To consider also other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter;

(d) To enumerate the proposals which had aroused particular interest in the Ad Hoc Committee.

5. At its thirtieth session, in 1975, the General Assembly decided (resolution 3499 (XXX)) to reconvene the Ad Hoc Committee as a special committee. The mandate was expanded as follows:

(a) To examine in detail the observations received from Governments concerning:

(i) Suggestions and proposals regarding the Charter of the United Nations;

(ii) The strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law in relations between States;

(b) To consider any additional specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes;

(c) To list the proposals which had been made in the Committee and to identify those which had awakened special interest.

Membership

6. At its thirtieth session, the General Assembly also decided to expand the membership of the Committee from the original 42 members to 47, by adding Barbados, Belgium, Egypt, Iraq and Romania. A list of the current members of the Committee is contained in paragraph 2 of the 1994 report of the Committee. 1/

7. Since 1975, the membership of the United Nations has increased substantially. There are now 185 Member States. The membership of the United Nations has also undergone changes in terms of geographical representation.

8. Eleven members of the Committee are from the Western European and other States region (totalling 27 Members of the United Nations). Another 11 are from the African region (totalling 53 Members of the United Nations). Ten are from the Asian group (totalling 49 Members of the United Nations), six from the Eastern European group (which has doubled in size in recent years to 20), and nine from the Latin American and Caribbean region (totalling 33 Members of the United Nations).

9. Although in practice the meetings of the Committee have, for many years, been open to those Member States which request observer status, the New Zealand proposal to expand the membership is based on principles of both democratization of the United Nations system (the sovereign equality of States) and equitable geographical representation.

Modest achievements

10. The achievements of the Committee are modest. During its last 10 years of operation it has achieved:

(a) The Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security (General Assembly resolution 49/57 of 9 December 1994, annex);

(b) The Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (General Assembly resolution 46/59 of 9 December 1991, annex);

(c) The Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51 of 5 December 1988, annex).

11. In the period prior to that, work was completed on:

(a) The conclusions concerning the rationalization of the procedures of the General Assembly (General Assembly resolution 39/88 B of 13 December 1984, annex);

(b) The Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10 of 15 November 1982, annex).

12. Of these achievements, the 1982 Manila Declaration on the Peaceful Settlements of International Disputes was significant. It is also useful to recall that the core of the mandate for the Committee is to examine observations from Governments concerning suggestions and proposals regarding the Charter.

13. In the light of recent debate in the Committee about the reform of the Security Council, a matter which threatens to go to the heart of the Committee's mandate, the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council was established. That body now carries forward this important work.

14. New Zealand proposes that, in the post-cold-war era, the Committee tackle more robustly the work which it was established to perform, particularly in the area of the maintenance of international peace and security.

Decision-making

15. In paragraph 2 of its resolution 3499 (XXX) the General Assembly requested the Committee to examine the proposals which had been made or would be made with a view to according priority to the consideration of those areas on which general agreement is possible.

16. This does not mean that the Committee is required to operate on the basis of consensus, or that contentious issues should not be discussed in the Committee. Rather, the General Assembly requested the Committee to focus on issues in respect of which there was a likelihood of reaching a fruitful conclusion. This should not preclude discussion aimed at ascertaining what common ground exists between members.

17. New Zealand supports the principle that the Committee proceed on the basis of the equitable distribution of time being accorded for debate and negotiation having regard to its mandate.

Summary

18. In view of the debate continuing in the Open-Ended Working Group, and the wide support for the general principles relating to the sovereign equality of States and equitable geographic representation, New Zealand proposes that the membership of the Committee be open to all Member States.

Notes

1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33 (A/49/33).

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ORGANIZATION
27 February 1995-10 March 1995

AMENDMENTS TO THE PROVISIONS OF THE MODEL RULES FOR CONCILIATION CONTAINED IN PARAGRAPH 107 OF THE REPORT OF THE SPECIAL COMMITTEE ON THE WORK OF ITS 1994 SESSION

Working paper submitted by Guatemala

Article 1, paragraph 1

Delete "may".

Article 2, paragraph 1

In the first sentence, replace "number of members" by "number and emoluments of the members".

Title of chapter III

Amend to read: "NUMBER AND APPOINTMENT OF CONCILIATORS"

Article 9

Change "may" to "shall". (In addition, in the interest of lengthening this article, which is excessively short, and also in order to conform to traditional wording, "own" could be inserted before the word "procedure".) Alternatively, article 9 could be deleted (in view of what article 11 (1) says about procedure).

Article 11, paragraph 3

In the first sentence, replace "in consultation with the parties concerned" by "in consultation with the parties".

Article 12

Replace "try to provide it" by "provide it to the greatest possible extent".

Article 13, paragraph 2

Amend to read: "The commission may accede to any request by a party that persons whose testimony that party considers necessary or useful be heard, or that experts be consulted or that local investigations be conducted."

Article 14, paragraph 3

Delete.

Article 15

In the first sentence, after "it", add "without the right to vote".

Article 16

In the first sentence, after "make", add "through the President".

Article 20, paragraph 1

In the first sentence, change "propose" to "make". In the second sentence, replace "To that end," by "Before deciding on the matter,".

Article 20, paragraph 2

At the end of the second sentence, change "proposed recommendations" to "recommendations made".

Article 20, paragraph 3

In the first sentence, replace "proposed" by "made".

Addition to Article 20

Add a new paragraph, numbered 4, reading as follows: "Should the commission decide not to make recommendations to the parties, its decision to that effect shall be recorded in a procès-verbal signed by the president and the secretary. A signed copy thereof shall be provided to each party. This shall conclude the proceedings."

Article 21

In the first sentence, replace "proposed recommendations" by "recommendations of the commission".

Article 25, paragraph 1

In the second sentence, replace "Its members" by "The parties, as well as the members of the commission". In the third line, after "maintain", add "strictly".

Article 25, paragraph 3 bis.

Delete.

Article 25, paragraph 4

Replace "one of these classified certified documents" by "any document or statement to which paragraph 1 above applies".

Article 27

The second sentence should be replaced by the following: "They shall, in particular, refrain from any measures which might have an adverse effect on the terms of settlement proposed by the commission, so long as those terms have not been explicitly rejected by either of the parties."